THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 1107 of 1993

Date 20.09.2005

Between:

Gokaraju Bangaramm, R/o.Ganapavaram, W.G. District & others.

..... PETITIONERS

AND

The District Collector, W.G. District Eluru & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 1107 OF 1993

O R D E R:

The relief sought for in this writ petition is for a direction to respondents not to meddle with the land in Survey Nos.187/6, 187/7 and 187/8 of Jagannadhapuram village, Ganapavaram Mandal, West Godavari District.

Facts, to the extent necessary for this writ petition, are that the first petitioner is the owner of an extent of land admeasuring Ac.1.18 cents and the second petitioner owns an extent of Ac.1.17 cents in Sy.No.187/5. Adjoining the said lands, there is a Donka Poramboke covering an extent of Ac.0.72 cents in Sy.No.187/6, a drain covering an extent of Ac.1.31 cents in Sy.No.187/7 and a tank covering an extent of Ac.1.72 cents in Sy.No.187/8. There was a proposal by the then Tahsildar, Tadepalligudem, to convert the lands in Sy.No.187 into village sites for granting house sites to Harijans of Ganapavaram. The opinion of the Irrigation Department was sought for, pursuant to which, the Executive Officer, Irrigation Department, vide letter dated 28.01.1985, is said to have raised objections to the said proposal insofar as the drain poramboke in Sy.No.187/7 and the tank in Sy.No.187/8 were concerned. The Mandal Revenue Officer, Ganapavaram, is said to have requested the Gram Panchayat to consider the proposal of converting village sites into house sites to be assigned in favour of Harijans and submit their objections, if any. The Gram Panchayat, in its meeting held on 04.07.1985, is said to have passed a resolution objecting to the proposal to convert the Poramboke land in Sy.No.187/6 and the drain in Sy.No.187/7 into house sites since they were required by the neighbouring land owners to carry on agricultural operations and that the drain in Sy.No.187/7 was necessary to discharge the drain water and the stagnant water in the tank. The Gram Panchayat is also said to have stated that there was a proposal to lay a road through the poramboke land. Since the respondents, despite the objections of the Irrigation Department, proposed to assign the lands in favour of Harijans of Ganapavaram village, the

petitioners and others filed W.P.No.7929 of 1985 seeking a direction to the respondents not to assign the lands in Sy.Nos.187/6, 187/7, 187/8 of Jagannadhapuram village. Respondents 3 to 24, in the present writ petition, impleaded themselves as respondents 3 to 24 in W.P.No.7929 of 1985. This Court, by order dated 18.06.1986, referred to Section 85(3) of the Gram Panchayat Act, 1964, (which is in *pari materia* with Section 80(3) of the A.P. Panchayat Raj Act, 1994), and held that this Court could not direct the respondents not to assign the land and it was for the petitioners to agitate whether such land was capable of being assigned or not. It was however left open to the Government to notify, if they considered that taking over of the said lands for the purpose of house sites was not detrimental to the interest of the people of the village and it was for the Government to implement the schemes for which they were seeking to take over the land from the Gram Panchayat. This Court observed, should there be any objections from the petitioners or other members of the community, the same may have to be disposed of by the Government on their merits. With these observations, the writ petition was disposed of.

After disposal of W.P.No.7929 of 1985, no steps were taken by the respondents to issue a notification under Section 85(3) of the A.P. Gram Panchayat Act, 1964. However, the Mandal Revenue Officer, Ganapavaram, sought to meddle with the drain in Sy.No.187/7 of Jagannadhapuram, as a result of which, the petitioners again approached this Court in W.P.No.9116 of 1987 seeking a direction to the respondents not to meddle with the lands in Sy.Nos.187/6, 187/7, 187/8 of Jagannadhapuram village. This Court, by order dated 19.07.1990 in W.P.No.9116 of 1987, upon referring to the earlier order in W.P.No.7929 of 1985, dated 18.06.1986, held that once a direction was given by the Court, the contention of the Collector that he need not follow does not hold good. The District Collector was directed to follow the directions given in the earlier order dated 18.06.1986, as expeditiously as possible, and till then, Status quo as on the date of the order was continued.

It is the case of the petitioners that, even after orders were passed in W.P.No.9116 of 1987, dated 19.07.1990, no steps were taken by the Government to issue the notification as contemplated under Section 85(3) of the A.P. Gram Panchayat Act and the petitioners continued to be in possession

of their lands. Alleging that the petitioners had sought to encroach upon the lands, in Sy.Nos.187/6, 187/7, 187/8, respondents are said to have entered the petitioners lands on 02.02.1993, and cut away 56 coconut trees, which the petitioners contend, belongs to them. As a result of which, they approached this Court and filed the present writ petition.

The fact that this Court, in both its earlier orders, had directed the respondents to take action only after issuing a notification under Section 85(3) of the Gram Panchayat Act, 1964, (which is in *pari materia* with Section 80(3) of the A.P. Panchayat Raj Act, 1994), is not in dispute. Respondents, however, contend that the petitioners had encroached upon the land in Sy.Nos.187/6, 187/7, 187/8. Reference is also made to certain suits in the counter affidavit, which the petitioners contend ended in their favour. However, this Court is not concerned, with the disputes in the suits, in the present writ petition. This Court, by order dated 18.03.2004, called for a factual report as to whether the petitioners had occupied any poramboke land. The Mandal Revenue Officer, Ganapavaram, submitted his report dated 04.05.2004 stating that he had inspected the land along with Mandal Surveyor, had caused measurements thereto and that there was no encroachment or occupation in any poramboke land by the petitioners in this writ petition. The Mandal Revenue Officer, along with his factual report, enclosed a self-explanatory sketch. As to whether the lands in Sy.Nos.187/6, 187/7, 187/8, should be assigned in favour of weaker sections is not for the petitioners to determine nor for this Court to adjudicate in this writ petition. Suffice to state that this issue was the subject matter of challenge before this Court earlier in W.P.No.7929 of 1985 and W.P.No.9116 of 1987. The Orders passed by this Court in both the writ petitions is binding on the respondents since they were parties thereto. In compliance with these orders, respondents are duty bound to take action only after issuance of a notification under Section 85(3) of the Gram Panchayat Act, 1964, (which is in *pari materi* with Section 80(3) of A.P. Panchayat Raj Act, 1994). Since this Court had earlier directed that the petitioners be heard before any decision is taken by the Government to allot the lands in these survey Nos. as house sites to Harijans, any decision to be taken by the respondents shall only be after the petitioners are heard in this regard.

Sri V.V.L.N.Sharma, learned counsel for respondents 3 to 24, would submit that

respondents 3 to 24 had been allotted house sites and several of them have already constructed houses thereon. Sri T.S.Anand, learned counsel for the petitioners would refer to the factual report according to which only five, among the beneficiaries, had constructed sheds and they were also directed to be evicted therefrom pursuant to the orders of this Court in the contempt case. It is not for this Court to go into these disputed questions of fact as to who is in possession of the land or whether any sheds or houses have already been constructed in these lands.

Since this writ petition is being disposed of directing the respondents not to take any coercive steps or to interfere with the land in Sy.Nos.187/6, 187/7, 187/8 till a notification is issued under Section 80(3) of the A.P. Panchayat Raj Act, 1994, and the petitioners are heard in the matter, there shall be a direction that status quo shall be maintained, pending possession being taken, as aforesaid, by the respondents herein.

Sri V.V.L.N.Sharma, learned counsel for respondents 3 to 24, would submit that since the petitioners are being given an opportunity of being heard, it is just and necessary that respondents 3 to 24 also be given such an opportunity. Learned counsel would submit that respondents 3 to 24 shall make a detailed representation, which respondents 1 and 2 may be directed to take into consideration before any decision is taken by them. In case, respondents 3 to 24 submit a representation within four weeks from the date of receipt of a copy of this order, respondents 1 and 2 shall take such representation also into consideration before any decision is taken in this regard.

The writ petition is accordingly disposed of. No order as to costs.

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20.09.2005

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